

**Exhibit E**

**Prager Deposition Excerpts**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

PROMESA

Title III

THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD FOR  
PUERTO RICO,

as representative of

THE COMMONWEALTH OF  
PUERTO RICO, et al.,  
THE COMMONWEALTH OF  
PUERTO RICO, et al.,

Case No.17-BK-3283

(Jointly Administered)

Debtors.

In re:

PROMESA

Title III

THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD OF  
PUERTO RICO,

as representative of

THE EMPLOYEES RETIREMENT  
SYSTEM OF THE GOVERNMENT  
OF THE COMMONWEALTH OF  
PUERTO RICO,

Case No. 17-BK-3566

Debtor.

In re:

PROMESA

Title III

THE FINANCIAL OVERSIGHT  
AND MANAGEMENT BOARD FOR  
PUERTO RICO,

as representative of

PUERTO RICO PUBLIC  
BUILDINGS AUTHORITY,

Case No. 19-BK-5523

Debtor.

\* \* \*

1 Remote videoconferenced deposition of  
2 DAVID W. PRAGER, Witness herein, called by the  
3 Financial Oversight and Management Board as  
4 Representative for the Debtors for  
5 cross-examination pursuant to the Federal Rules of  
6 Civil Procedure, taken before me, April L. Crites,  
7 RPR, RMR, CRR, a Notary Public in and for the  
8 State of Ohio, in New York City, New York, on  
9 Tuesday, October 19, 2021, at 9:31 a.m., Atlantic  
10 Standard Time.

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I N D E X

EXAMINATIONS CONDUCTED PAGE

DAVID W. PRAGER

Cross-Examination By Mr. Mervis..... 11

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EXHIBITS

MARKED DESCRIPTION PAGE

Exhibit 1 Report of David W. Prager, 35  
CFA, Respecting Best  
Interests of Creditors Test,  
October 8, 2021

\* \* \*



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8 Paul Baker, Concierge

9 \* \* \*

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1 A. I don't recall --

2 Q. Do you -- sorry. Let me ask a  
3 slightly different question.

4 Do you know how -- or what period of  
5 time, under the plan, the disaster liquidity  
6 revolver would be funded?

7 A. Well, what I know is that -- I know  
8 the fiscal plan -- there is no release of those  
9 funds, and, therefore, on the economic basis  
10 that's being analyzed here, those money are  
11 permanently being set aside and not available to  
12 creditors.

13 Q. Your understanding is that -- do you  
14 have an understanding one way or the other as to  
15 whether the -- the \$750 million of funding  
16 under -- for -- for the disaster liquidity  
17 revolver is ultimately paid to creditors?

18 A. It is -- that money is incremental  
19 to the money that's in the fiscal plan, because  
20 there's no way that that money is flowing back  
21 into the fiscal plan. If it were to be released  
22 and used, you know, that -- that would be, you  
23 know, effectively a wash with other areas, in  
24 the -- in the analysis here.

25 Q. But my question was a little more

1 specific.

2 Do you know whether, under either  
3 the plan or the fiscal plan, the 750 million will  
4 at some point be distributed to creditors?

5 A. I know that it is not incremental to  
6 the value of creditors otherwise set forth in  
7 the -- in the analysis here. How it is managed  
8 over time, I would have to refresh my  
9 recollection on that.

10 Q. Fair enough.

11 Go to slide 13, please.

12 A. Yes, sir.

13 Q. There's a discussion in the  
14 left-hand column about statutory priority.

15 Do you see that?

16 A. Are you referring to the bullet  
17 points with green next to them.

18 Q. Yes, sir. No. Oh, yeah, I guess  
19 they are green. Yeah.

20 A. I -- I see the bullet points. I --  
21 I will not comment on your characterization of  
22 them as a discussion, but I see the bullet  
23 points.

24 Q. Fair enough.

25 The statements that are made in

1 I put that in what's here, the Government  
2 Functions category, or also referred to as  
3 Regulatory and Administrative. It's the subtotal  
4 here, Regulatory and Administrative.

5 And then beyond that, there were --  
6 was the other category, and that is what I refer  
7 to as Noncore.

8 BY MR. MERVIS:

9 Q. With respect to the programs that  
10 are under the Noncore heading, do you know  
11 whether any of them, under the current budget,  
12 are funded in whole or in part by federal funds?

13 A. It's possible that some of them are.  
14 I am aware that that could be an issue that if  
15 you were to tie it down into a detailed discovery  
16 process on this, you might find that some of the  
17 noncore are offset by federal funds, or  
18 otherwise, similarly, if you were to dive down  
19 into what's classified here categorically as core  
20 or government functions, you might find things  
21 that should probably be in noncore. So it's  
22 consistent with the discussion we had earlier  
23 about this being preliminary or illustrative.  
24 It's -- the basic approach here was to follow  
25 the -- the face of the budget and to not dive

1 much deeper, not dive deeper than that, because  
2 that was -- we're not in litigation over this  
3 specific issue.

4 Q. In classifying the programs that are  
5 listed under the Noncore heading on slide 16 of  
6 your report, did you -- did you do anything to  
7 investigate whether federal funding was involved?

8 A. I don't believe we -- I delved into  
9 the specifics of each line item, tying it to --  
10 to federal funding. Again, as I mentioned, I  
11 think that there are things that could move from  
12 the noncore list to the government functions or  
13 to the core list, and things that can move from  
14 core and government functions back onto the  
15 noncore list, for one to investigate in kind of a  
16 fully litigated manner.

17 Q. Do you know whether -- I'm sorry.

18 MR. MERVIS: Can I ask the court  
19 reporter just to read back the beginning of that  
20 answer?

21 (Thereupon, the record was read.)

22 MR. MERVIS: Okay. I got it.

23 Thank you.

24 BY MR. MERVIS:

25 Q. Do you know whether the extent of

1 federal funding of any of the programs that are  
2 listed under the Noncore column is publicly  
3 available information?

4 A. Again, I don't know that anything in  
5 this column is federal funding, if it relates to  
6 federal funding. If it is, I imagine how you  
7 might be able to connect the dots and pull it all  
8 back together through -- through kind of a fully  
9 vetted kind of document review. The purpose here  
10 is merely to provide an order of magnitude and  
11 directional point that not only are the noncore,  
12 but there's also the government functions that  
13 under the plain reading of the law would call --  
14 would come even below the third priority of -- of  
15 expenses and to set forth an initial allocation  
16 of those values, subject to, if we were to  
17 litigate this fully -- by additional discovery  
18 and additional fact searches.

19 Q. Right. But public -- you're not --  
20 just to be clear, are -- you're not saying that  
21 you need discovery to find out whether federal  
22 funds are used to fund any of the programs that  
23 are listed under the Noncore column --

24 MR. KOFF: Objection to form.

25 BY MR. MERVIS:

1 Q. -- on page 16?

2 MR. KOFF: Sorry. Objection to  
3 form.

4 THE WITNESS: That's not exactly  
5 what I said.

6 BY MR. MERVIS:

7 Q. I understand that.

8 But do you think you would need  
9 discovery to determine whether federal funds are  
10 used to fund, in whole or in part, any of the  
11 programs that are listed under the Noncore column  
12 on page 16 of your report?

13 A. I believe that discovery would be  
14 the most sufficient method to -- to determining  
15 that, but there are probably other methods, at  
16 least for some of them.

17 Q. Including the -- well, withdrawn.

18 In your alternative -- in your  
19 conservative alternative enforcement scenario, do  
20 you assume that all of the programs that are in  
21 the Noncore column on page 16 are not funded?

22 A. No.

23 Q. What -- in your alternative  
24 enforcement scenarios, do you assume that all of  
25 the programs under -- I'm sorry -- the money



1                   To make sure I understand, you're --  
2     you're not -- you're not opining, I gather, that  
3     any particular services would be cut in the -- in  
4     your alternative enforcement scenarios?

5                   A.     That's correct.

6                   Q.     You -- you are opining that in -- in  
7     your alternative enforcement scenarios, a court  
8     might direct that certain expenditures be cut; is  
9     that correct?

10                  A.     I don't think I've even gone that  
11     far so --

12                  Q.     Okay. Your alternative -- well,  
13     let's see if we can establish a couple things.

14                         The revenues that you used -- that  
15     you use in your alternative enforcement scenarios  
16     include the revenues that are projected in the  
17     2021 fiscal plan; is that right?

18                  A.     Yes.

19                  Q.     Okay. And with respect to those  
20     projections, in your report you don't make any  
21     downward adjustments to the projections; is that  
22     correct?

23                  A.     Correct.

24                  Q.     And then you also, in your report,  
25     call for some commentary about potential

1     fiscal plan's model.

2             Q.     Right. But in -- again, I'm focused  
3     on the dynamic piece of it.

4                     Did you actually go into the  
5     model -- well, let me take a specific example.

6             A.     Sure.

7             Q.     On page 15, right -- or slide 15 of  
8     your report, there's a one point -- you know,  
9     there's this non -- this total noncore line item  
10    that's 1.177. Did you go into the model to --  
11    and actually make that adjustment to spending to  
12    see how it might impact the out -- the outputs?

13            A.     No.

14            Q.     Did you go into the model and make  
15    any adjustment with respect to spending, to see  
16    how it would impact the outputs?

17            A.     No. It wasn't necessary. That  
18    model was fairly self-explanatory of what the  
19    data are.

20            Q.     You're not saying, are you, that if  
21    you did go into the model and cut some of the  
22    spending, it would have no impact on the -- the  
23    outputs, right? Let me ask a different -- let me  
24    ask it a different way.

25                    The way you understand the fiscal

1     protections of persons and property, public  
2     education programs, public welfare programs, for  
3     payment of employer contributions to retirement  
4     systems.

5             Q.     If a court were to decide to cut --  
6     or to mandate the elimination of spending on the  
7     culture programs that you identify on slide 16,  
8     do you have an opinion as to how that might  
9     impact the level of out-migration on the island?

10            MS. JENNINGS:   Objection to form.

11            THE WITNESS:   I have no opinion.  
12     Again, as we've discussed at length this morning,  
13     the policy decisions on what to -- to cut, or  
14     rather to raise taxes in lieu of cutting, or how  
15     to fund some of these programs, is not the basis  
16     of my opinion.

17            My opinion is solely to say that a  
18     court might find that these expenses should not  
19     have priority over public debts or other  
20     contractual commitments.

21            Q.     Sticking with slide 16.   The box to  
22     the far right, Incentives paid to airlines to  
23     increase tourism.   Do you see that?

24            A.     I do.

25            Q.     What is your understanding of the --

1 the nature of that program or those incentives?

2 A. It's my understanding that there is  
3 \$5 million a year being paid to airlines in order  
4 to increase tourism.

5 Q. And do you have an opinion one way  
6 or the other as to whether if a court were to  
7 mandate that that money not be spent, there would  
8 be a negative impact on tourism?

9 MS. JENNINGS: Objection to form.

10 THE WITNESS: Again, I -- I am  
11 not -- I'm taking no position on whether these  
12 monies should be spent or not spent; indeed, my  
13 analysis assumes that the Oversight Board has  
14 done a fine job of prioritizing -- or -- or  
15 controlling expenses.

16 What I am flagging here is that  
17 there are expenses that are in the budget which  
18 not only are they being elevated amongst first  
19 and second priority, they shouldn't -- they don't  
20 even appear to meet the clear language of the  
21 third priority of expenses, nor do they even seem  
22 to be proper functioning of the government.

23 And so as I understand what  
24 nonbankruptcy law as a layperson, but who  
25 practices in this area, would understand what

1 would be considered as a measure as opposed to  
2 reform. Some of the pension reform -- some of  
3 the pension changes were, I believe, classified  
4 as measures versus as a structural reform.

5 Q. And do you know whether any of the  
6 fiscal measures that are in the 2021 fiscal plan  
7 appeared in prior iterations of the Oversight  
8 Board fiscal plan?

9 A. I believe many or most of them did  
10 in some form.

11 Q. In the second sentence, you say --  
12 your -- or the report says, While implementation  
13 may present certain challenges.

14 Do you see that?

15 A. I see that as a fragment of that  
16 sentence.

17 Q. Yeah, as a fragment.

18 What challenges are you thinking of  
19 there?

20 A. I think political would be probably  
21 the -- the key amongst the -- the key qualifier  
22 of what type of challenges.

23 Q. And what do you mean by political?

24 A. I am aware that the -- the board and  
25 the government have disagreed about certain of

1 enacted so far?

2 A. As I stated to you previously, I --  
3 I am not keeping score. I believe that they are  
4 executing as well as they -- as they can with the  
5 tools that they believe that they have and with  
6 the strategic approach that they have decided  
7 to -- to execute. I believe that they certified  
8 their plan -- the fiscal plan -- in good faith  
9 and with the understanding that the -- that the  
10 reforms that they are setting forth, that they  
11 are attainable.

12 Q. Do you know -- do you know if any of  
13 the structural reforms that have been included in  
14 the Oversight Board's fiscal plans have been  
15 implemented up till now?

16 A. I have a recollection of some of  
17 them having been -- having been implemented.

18 Q. And what do you recall?

19 A. I recall earlier fiscal plans moving  
20 certain assumptions from -- from baseline --  
21 or -- or from measures and -- and upsides into --  
22 in baseline. I don't recall the specifics of it.

23 As I said, I'm not here to score  
24 them, to take a view on how effective they will  
25 be at doing their job. I believe that they will